



# The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 133] NEW DELHI, THURSDAY, MAY 28, 1953

ELECTION COMMISSION, INDIA

NOTIFICATIONS

1

*New Delhi, the 16th May 1953*

S.R.O. 967.—WHEREAS the election of Shri Waryam Singh as member of the Legislative Assembly of the State of Punjab from Amritsar constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Surain Singh, son of Shri Kishan Singh, Kamboh of Talwandi Dogran, Tehsil and District Amritsar;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, JULLUNDUR

CORAM:

Shamsher Bahadur Bar-at-Law—Chairman.

Chhaju Ram B.A. (Hons.) LL.B., P.C.S.—Member.

Mohindra Singh Pannun M.A., LL.M., D.C.P.—Member.

ELECTION PETITION NO. 193 OF 1952

Surain Singh son of Kishan Singh, Kamboh of Talwandi Dogran, Tehsil and District Amritsar—Petitioner.

*Versus*

1. S. Waryman Singh son of S. Arur Singh, Jat of Sultanwind,
2. Col. Buta Singh son of S. Arur Singh, Jat of Naushehra,
3. S. Ujagar Singh son of S. Gurdit Singh, Jaura Pipal, Amritsar,
4. S. Khem Singh son of S. Nihal Singh of Tung Pain,
5. S. Atma Singh son of Harl Singh, Kote Baba Dip Singh, Amritsar,
6. S. Uttam Singh son of S. Lal Singh of Bagga,
7. S. Tara Singh son of Labh Singh of Meharbanpur,
8. Shri Sohan Lal son of Amin Chand of Gopal Pura,
9. S. Mohindar Singh son of S. Harnam Singh of Verka,
10. Shri Amin Chand son of Shri Nathu Ram care of Shri Kirpa Ram Vir, Municipal Commissioner, Amritsar,

11. Shri Pindi Das son of Sohan Lal, Durgayana, Amritsar,
12. Shri Jaswant Rai son of Pt. Moti Ram of Kandowali Tehsil Ajnala.
13. S. Jogindar Singh son of S. Shib Dyal Singh of Gumtala,
14. S. Dalip Singh son of S. Khem Singh of Thathian,
15. S. Santa Singh son of Vir Singh of Sultanwind,
16. S. Sulakhan Singh son of S. Dewan Singh of Sardar Metal Works, Jandiala Guru,
17. S. Sohan Singh son of S. Kaka Singh of Chatiwind,
18. S Gulab Singh son of Dial Singh of Wallah,
19. S. Gurdip Singh son of S. Lachhman Singh of Wadala, Bhitewad,
20. S. Lal Singh son of Kehar Singh of Fetehpur,
21. Charan Singh son of S. Nihal Singh of Tung Pain, all of Tehsil and District of Amritsar—Respondents.

### JUDGMENT

(PER CHHAJU RAM—MEMBER)

The election in Amritsar Constituency No. 88 of the Punjab State Legislative Assembly was held from 7th to 23rd January, 1952. The respondents Nos. 1 to 21 were duly nominated candidates. The respondent No. 1 S. Waryam Singh of sultanwind was duly elected by securing 23872 votes. Respondent No. 4 S. Khem Singh of Tung Pain was also elected from the reserved seat, as this was a double member constituency. He secured 23839 votes. The petitioner is a voter in Zail Fatehpur Rajputana in the said Amritsar Constituency. He has brought this election petition for a declaration that the election of S. Waryam Singh respondent No. 1 be held void. It is alleged in the petition that S. Waryam Singh respondent No. 1 was proposed by village headmen and thus he procured assistance for the furtherance of his prospects as a candidate at the election from the persons serving under the Government of the Punjab State and thereby committed a corrupt practice detailed in Section 123(8) of the Representation of the People Act, 1951; that the respondent No. 1 was assisted in procuring votes by the said village headmen from their villages and *ilaqa*; that they worked for him during the election and thereby furthered his prospects as a candidate; that the agents or other workers of S. Waryam Singh, with his connivance, hired or procured motor vehicles for the transport of electors and thereby committed major corrupt practice detailed in Section 123(6) of the aforesaid Act; that the nomination papers of S. Buta Singh respondent No. 2, a *lambardar*, were improperly accepted and those of Shri Shangara Singh, Shri Bidhan Singh and Shri Faqir Singh were improperly rejected which materially affected the result of the election; that the boxes used were so constructed that they could be opened and ballot papers drawn therefrom without the seals being broken so that the provisions of rule 21 were not fulfilled and the ballot papers not being secured, in the ballot boxes, it could not be said that there was a fair election and that the provisions of rule 46 (vi) requiring one box to be opened at a time and the marks and symbols checked and the ballot papers counted before proceeding with the next box, were not complied with, inasmuch as four boxes were being simultaneously opened and counted and the count was not disclosed so that the candidate or his election agent could not keep any check as required by the rule and the election could, therefore, not be said to be a fair one.

All the respondents were duly served out of whom only respondent No. 1 contested this petition. He raised several preliminary objections on which the following four preliminary issues framed on 8th November 1952:—

1. Is the petition barred by time?
2. Was the petition not presented to the proper authority?
3. Is the petition liable to be dismissed for reasons assigned in paragraphs 4, 5 and 6 of the preliminary objections?
4. Was the deposit not made in accordance with law?

On 1st December 1952 the learned counsel for respondent No. 1 made a statement that he did not press issues Nos. 1, 2 and 4. On that very day the learned counsel for the petitioner stated that he did not wish to press the allegations contained in para. 8 of the petition. By our order of 6th December 1952 we found the preliminary issue No. 3 against the respondent No. 1. That order of ours may be read as a part of this judgment.

The respondent No. 1 denied that he obtained any assistance in connection with his election from any village headmen and pleaded that he filed six nomination papers all of which were accepted; that as far as the proposers in his two nomination papers, namely Balwant Singh and Gurbachan Singh were concerned, even if they were headmen there was no bar to their exercising the right of vote or to propose candidates; that the decision of the Returning Officer regarding the relevant two nomination papers was quite correct; that even if it be presumed that these two nomination papers were invalid, the nomination of respondent No. 1 as a candidate was perfectly lawful and valid; that no agent or worker of respondent No. 1 nor any body else hired or procured any motor vehicle for the transport of electors, with his connivance or otherwise; that the ballot boxes could not be opened and the ballot papers could not be withdrawn without breaking the seals; that the procedure prescribed by the relevant rules was fully complied with; that the provisions of the law governing the procedure or the counting of votes were fully complied with and that the petition was liable to be dismissed.

As the allegations contained in para. 8 of the petition regarding the alleged improper acceptance of the nomination papers of S. Buta Singh respondent No. 2 and those relating to the alleged improper rejection of the nomination papers of Shingara Singh, Shri Bidhan Singh and Shri Faqir Singh, were given up by learned counsel for the petitioner, there was no necessity of framing any issue in respect of the allegations contained in that para.

The following issues were framed on merits on 6th December 1952:—

1. Did respondent No. 1, the returned candidate, commit a corrupt practice as alleged in para. No. 5 of the petition? If so, what is its effect?
2. Was Shri Waryam Singh respondent assisted in procuring votes by the village headmen and was he guilty of a corrupt practice as alleged in para. No. 6 of the petition? If so, what is its effect?
3. Did agents or other workers of Shri Waryam Singh hire or procure motor vehicles for the transport of electors and commit major corrupt practice as alleged in para. No. 7 of the petition, and if so, what is its effect?
4. Were the provisions of rule 21 and 46(vi) not fulfilled as alleged in paras. Nos. 9 and 10 of the petition, and if so, what is its effect?
5. To what relief, if any, is the petitioner entitled?

It will be convenient to take up issue No. 1 last of all.

*Issue No. 2.*—The point for determination is whether Shri Waryam Singh respondent was assisted in procuring votes by the village headmen (Shri Gurbachan Singh of Verka P.W. 26 and Shri Balwant Singh of Sultanwind R.W. 3) and was he guilty of a corrupt practice as alleged in para. No. 6 of the petition and if so, what is its effect?

In the list of corrupt practices annexed to the petition it has been mentioned that Balwant Singh *lambardar* of Sultanwind persuaded voters at Sultanwind, Chatiwind, Kot Mit Singh, and Khankot on or about 16th to 19th January 1952, at the asking or connivance of S. Waryam Singh to vote for him and brought voters to his camp. It has further been mentioned that Gurbachan Singh *lambardar* of Verka and former Zalldar of Zall Verka persuaded voters to vote for S. Waryam Singh and brought voters to his camp particularly in villages Verka, Wallah, Tung Pain, and Fateh Garh at the respondent's asking or connivance on or about 14th to 19th January, 1952.

The petitioner has placed himself into the witness box as P.W. 33 and relies upon the statements of P.Ws. 1, 2, 3, 4, 9, 10, 12, 17, 18, 19, 24, 29 and 30 on this issue. In rebuttal the respondent No. 1 appeared as R.W. 5 and produced Balwant Singh *lambardar* (R.W. 3) both of whom emphatically deny the allegation mentioned above of the petitioner. Even P.W. 26 S. Gurbachan Singh *lambardar* of Verka who was produced by the petitioner to prove his signature on the nomination paper Exr. P.W. 5/5 of respondent No. 1, avers that he did not render assistance of any nature to S. Waryam Singh to further his prospects in the election. The evidence relied upon by the petitioner on the said issue is unsatisfactory and unconvincing. It is not difficult to produce evidence of this nature and we are quite unable to rely upon the witnesses produced by the petitioner, P.W. 1 Hazara Singh Mazhabli of Verka, P.W. 2 Dalip Singh Jat of Verka, P.W. 3 Gopal Kaur

(wife of P.W. 2), P.W. 4 Mst. Taro (wife of P.W. 1), P.W. 9 Mst. Guro Mazhbi of Fateh Garh, and P.W. 10 Tara Singh Kamboh of Fateh Garh depose that the said Gurbachan Singh *lambardar* asked them to vote for respondent No. 1 and took them to Polling Station. P.W. 1 cannot give even the date or month when he was taken to Polling Station. He was convicted in an excise case along with his wife (P.W. 4). He falsely denies that his wife was a co-accused in that case with him. Certified copy Ext. R.W. 5/1 belies the statement of this witness. The P.W. 2 Dalip Singh is admittedly *Badmash* No. 10 and was convicted twice in excise and Arms Act cases. He also cannot give the day on which he cast his vote. P.W. 3 Gopal Kaur is the wife of P.W. 2 who cannot even say whether S. Dhara Singh *lambardar* is her cousin. P.W. 4 Mst. Taro (wife of P.W. 1) cannot give the date or month when she went to the Polling Station. Like her husband she also perjures by stating that she was not prosecuted in an excise case. P.W. 9 Mst. Guro admits that Gurbachan Singh *lambardar* does not belong to her village and that she did not know her at all. In the circumstances it is not possible to believe her statement that he only approached her for her vote. P.W. 10 Tara Singh admits in cross-examination that he never told the petitioner about his casting vote for the Congress candidate at the instance of Gurbachan Singh *lambardar* and that in fact he did not talk about this matter to anyone. In the circumstances it is surprising that he was cited and produced as a witness by the petitioner. P.W. 12 Tara Singh (of Verka) states that S. Gurbachan Singh vassed for votes for respondent No. 1 and took voters to the Polling Station. According to this witness about 150 voters were taken by S. Gurbachan Singh to the Polling Station, but strangely enough he cannot give the name of a single voter. He admits in cross-examination that in his presence S. Gurbachan Singh did not canvass any voter. Moreover, he was admittedly polling agent of the communist candidate and appears to be an interested person. P.W. 24 Sadhu Singh also was a polling agent of S. Ujagar Singh respondent who deposes that S. Gurbachan Singh was supporting the Congress candidate. This witness too is clearly an interested person and no reliance can be placed on him.

P.W. 17 Gurbachan Singh, P.W. 18 Milkha Singh, and P.W. 19 Ghuggi (all of Sultanwind) state that Balwant Singh *lambardar* asked them to vote for respondent No. 1 and took them to the Polling Station. P.W. 29 Gurmej Singh and P.W. 30 Dalip Singh (both of village Khankot) depose to the same effect. P.W. 17 resides in Patti Sultan of which the *lambardar* is Fauja Singh. As such it is difficult to believe that Balwant Singh who is a *lambardar* of different Patti (Mansur) could exercise any influence or pressure on him. Similarly P.W. 18 also resides in the Patti of Fauja Singh *lambardar* and for the reason given above Balwant Singh could not influence him. Moreover, the witness appears to be on inimical terms with respondent No. 1. P.W. 19 Ghuggi cannot even say whether he went to the Polling Station to cast his vote on the first or the second day of the Polling. P.W.s. 29 and 30 are real brothers. The former cannot give even the month in which the polling took place. When he was asked whether he had told the Petitioner that he had decided to vote for respondent No. 1 (as alleged by him) and that he would not vote for S. Ujagar Singh communist candidate, he said that his mind was too upset to reply to that question. This shows that he is a false witness who could not find any excuse to conceal his untruthfulness. The petitioner worked as a Polling agent of S. Ujagar Singh communist candidate. He admits that the expenses of this petition have been borne by the communist party. It appears from his statement that he has no personal knowledge about the alleged irregularities. He admits that he was not present in Sultanwind, Khankot, Kot Mit Singh, and Chatiwind villages on the dates of actual polling. The evidence adduced by the petitioner is unworthy of credence and far from satisfactory. The respondent No. 1 and the two *lambardars* mentioned above categorically deny the allegations contained in para. No. 6 of the petition. After careful consideration of the evidence on record we hold that the petitioner has miserably failed to discharge the onus of this issue. We accordingly find that the corrupt practice alleged by the petitioner in the aforesaid para, and the relevant list annexed to the petition has not been proved to have been committed.

*Issue No. 3.*—We are now to determine whether the agents or other workers of Shri Waryam Singh hired or procured motor vehicles for the transport of electors and committed major corrupt practice as alleged in para. No. 7 of the petition and if so, what is its effect? In the list of corrupt practices given by the petitioner it has been mentioned that truck No. 1026 PNJ was used to transport voters from village Sahnewali to Polling Station Waryam Nangal on or about the 8th January, 1952, at the instance of Teja Singh son of Isar Singh of Waryam Nangal, Karnail Singh son of Nand Singh of Alkare and Sardul Singh of Begewal with the connivance of the respondent. There is further allegation in the list that at Chhajjalwadi polling station voters were transported on motor vehicle on or about 7/8-1-52 with the consent and connivance of the respondent. From the list it

is clear that it does not give full particulars of the corrupt practice which the petitioner alleges, especially regarding the voters transported or the vehicle used in respect of Chhajjalwadi polling station. The petitioner when examined as his own witness as P.W. 33 states that he cannot say whether the truck No. 1026 PNJ had been hired by respondent No. 1 or not. Similarly he is unable to say whether the Station Wagon had been hired by the said respondent or not. He cannot give the name of any voter who was transported at the instance of respondent No. 1 in truck No. PNJ 1026. He relies on the statements of P.W. 13 Harnam Singh (of Tara Garh), P.W. 14 Kapur Singh (of Tara Garh), P.W. 15 Kishan Singh (of Khela), P.W. 16 Lachhman Singh (of Trimoval), P.W. 18 Milkha Singh (of Sultanwind), P.W. 20 Shri Gurdip Singh Professor, P.W. 21 Shri Uttam Singh (of Bagga), P.W. 22 Shri Chanan Singh Motor Taxation Clerk, Jullundur, P.W. 23 Shri Gurmukh Singh motor-taxation Clerk Deputy Commissioner's Office, Amritsar, P.W. 24 Sadhu Singh Polling Agent of the communist candidate, P.W. 25 Hazara Singh (Porshi Rajputan), P.W. 27 Shri D. D. Sharma, A.D.M., P.W. 28 Thakar Singh (of Tara Garh), P.W. 31 Sarup Singh (of Jethuwala) and P.W. 32 Sant Singh (of Wallah). P.W. 13 Harnam Singh deposes that he was taken in a motor vehicle occupied by respondent No. 1 and his companions to Chhajjalwadi polling station on polling day. The witness cannot give the names of the companions of S. Waryam Singh nor can he give the name of the driver or the number of the vehicle. P.W. 14 Kapur Singh was a polling agent of S. Ujagar Singh at Chhajjalwadi polling station who states that on coming to know that voters were being transported by respondent No. 1 in vehicle No. PNJ 3516 he made a written complaint to the Presiding Officer on 7th January 1952. These particulars were not given in the list by the petitioner and as such it is not possible to believe this belated version. The statements of P.W. 15 Kishan Singh and P.W. 16 Lachhman Singh are to the same effect as that of P.W. 13. The statement of P.W. 18 Milkha Singh that the respondent No. 1 used the truck of Janmeja Singh for carrying voters, is contradicted by R.W. 2 Janmeja Singh himself. P.W. 20 Shri Gurdip Singh states that he was the polling agent of S. Ujagar Singh (communist candidate) at Waryam Nangal polling Station, that on 8th January 1952 polling agents of different candidates told him that voters of village Sahnewali were being carried in truck No. PNJ 1026 by respondent No. 1, that they complained about it to A.S.I. Lachhman Singh who was on duty and to the Presiding Officer, but to no avail. P.W. 21 Uttam Singh also supports P.W. 20. The P.W.s. 20 and 21 are interested persons and their version is belied by the polling programme Ext. R.W. 1/1 which shows that the voters of village Sahnewali went to polls on 7th January 1952 and not on 8th January 1952. From the statement of P.W. 27 Shri D. D. Sharma (who was the returning Officer of this constituency) it is clear that no such complaint as is alleged by P.W.s. 20 and 21 was made to the Presiding Officer. The best persons who could have thrown more light on this matter were the Presiding Officer concerned and the A.S.I. Lachhman Singh who were not produced by the petitioner, for reasons best known to him. For the reasons given above we are not prepared to believe the P.W.s. 20 and 21. Shri Dula Singh is entered as the owner of Station Wagon PNJ 3516 and Shri Janmeja Singh is recorded as the owner of truck No. PNJ 1026 (vide the statements of P.W.s. 22 and 23). P.W. 24 Sadhu Singh deposes that he saw lambardar Gurbachan Singh transporting voters of respondent No. 1 at Fatehgarh polling Station. There is no such allegation in the list and this version appears to be a faked one. The statement of P.W. 25 Hazara Singh that he saw some voters in Station Wagon No. 3516 with respondent No. 1 at Chhajjalwadi Polling Station is equally unworthy of reliance. He is unable to say who those voters were. P.W. 26 Gurbachan Singh does not support the petitioner on this point. P.W. 28 Thakar Singh admits that he was inclined to vote for the communist candidate Ujagar Singh. It is surprising that he did not even know what his symbol was. His statement also is quite unsatisfactory. P.W. 31 Sarup Singh agent of Shri Buta Singh respondent makes a statement to the same effect as the P.W.s. 20 and 21 and for the same reasons we are unable to accept his testimony also. Moreover, he admits that the written application was not presented in his presence. It has also not been mentioned who the scribe of that application was. P.W. 32 Sant Singh supports the statements of P.W.s. 20 and 21. He avers that voters from villages Chovindadevi and Ajalbwali were being transported by S. Waryam Singh respondent. This fact, however, is not mentioned in the list and as such no reliance can be placed on this testimony of the witness.

In rebuttal the respondent has placed himself into the witness box as R.W. 5 and also relies upon the statements of R.W. 2 Janmeja Singh, R.W. 3 Balwant Singh, and R.W. 4 Gian Chand. R.W. 2 states that he never gave his truck No. PNJ 1026 on hire to respondent No. 1 during the election days. R.W. 3 deposes that he did not render assistance of any kind to the said respondent. R.W. 4 Gyan Chand states that Dula Singh was the driver of his company, that his Station Wagon No. PNJ 3516 remained on hire with respondent No. 1 from 1st December 1951 to

4th January 1952, and that after 4th January 1952 it was never given on hire to respondent No. 1 or his representative. The respondent No. 1 also emphatically denies the allegations of the petitioner on this point. There are no reasons why the statements of the R.W.s. should be disbelieved. We have given our best and anxious consideration to the evidence on record and find that the petitioner has failed to prove the allegations contained in para. No. 7 of the petition. We consequently hold that the corrupt practice mentioned in the said para. and the relevant list has not been proved to have been committed.

**Issue No. 4.**—No evidence was led on this issue by the petitioner and in the course of arguments the learned counsel for the petitioner did not press this issue and so it is decided against the petitioner.

**Issue No. 1.**—It is common ground that out of the six nomination papers filed by respondent No. 1, one was subscribed as proposer by S. Balwant Singh *lambardar* and one by S. Gurbachan Singh *lambardar*. The petitioner contends that as these village headmen had sponsored the nomination papers of respondent No. 1, it must be deduced as an inescapable inference under S. 123(8) of the Representation of the People Act, 1951, that a major corrupt practice was committed by obtaining respondent No. 1's assistance for the furtherance of the prospects of his election. We are definitely of opinion that this contention of the petitioner is without substance and cannot, therefore, prevail. From the evidence adduced by the petitioner which was discussed above we are not at all satisfied that the said *lambardars* rendered any assistance to respondent No. 1. We now seek to solve the legal problem covered by this issue whether the signature *per se* of a *lambardar* as a proposer on the nomination paper of a candidate amounts to obtaining or procuring by a candidate, any assistance for the furtherance of the prospects of his (the candidate's) election. In our opinion the utmost that can be said is that by subscribing as a proposer the *lambardar* merely showed his intention to support the candidature of respondent No. 1. It has been conceded that the mere subscribing as a proposer does not entail any obligation on the part of the *lambardar* even to vote for the candidate. By implication it amounts to only this that the proposer considers the person proposed as a fit candidate. At this stage the proposer does not even know which other candidates would be contesting the Election. It can never be said with certainty that the proposer will in the end vote for his nominee, much less support him. The act of subscribing as a proposer can thus at the utmost be regarded as a mere promise to vote which may never be fulfilled. By any stretch of language or imagination it cannot amount to the obtaining or procuring or abetting or attempting to obtain or procure by a candidate any assistance for the furtherance of the prospects of the candidate's election. It is possible that a nomination paper subscribed by a proposer may not be presented at all or it may be rejected on scrutiny or a candidate may withdraw his candidature after he has been validly nominated. So at the stage when a nomination paper is merely subscribed by a proposer there is no question of assistance within the meaning of S. 123(8) of the Act.

Under S. 33(2) of the Act any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in Section 16 of the Representation of the People Act, 1950 (XLIII of 1950) may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled, but no more. The *lambardars* in the present case could subscribe as proposer, as they were registered in the electoral roll of the constituency and were not subject to any disqualification mentioned in Section 16 of the Representation of the People Act, 1950.

Under S. 36(2) of the Act the Returning Officer may refuse any nomination on any of the five grounds (a) to (e). It may be noticed that there is no mention in S. 36(2) that the nomination will be refused if it is proposed by a *lambardar*. Had there been such bar or disqualification in the case of a *lambardar* the legislature would have been careful to specify it. The right of subscribing given by the Statute has not been expressly taken away and so it cannot amount to corrupt practice. It is a well settled principle that a penal statute must be construed strictly. For the reasons given above we hold that the subscribing of the nomination papers by the village Headmen Balwant Singh and Gurbachan Singh as proposers does not amount to the obtaining or procuring by respondent No. 1, any assistance for the furtherance of the prospects of his election and it cannot, therefore, be deemed to be corrupt practice mentioned in S. 123(8) of the Act. It seems to us that the true intention of the legislature as mentioned by P. Nanak Chand, or page 4 of his book on the Law of Election, 1951, was to prevent village officials from canvassing votes for a particular candidate. We decide this issue against the petitioner.

**Issue No. 5.**—In view of our findings above the petition fails and is dismissed with costs. Having regard to all the facts and circumstances of this case we assess Rs. 100 (Rupees one hundred) as the total costs which are to be paid by the petitioner to respondent No. 1 Shri Waryam Singh. The costs are to be realised from the amount of Rs. 1,000 deposited by the petitioner.

Announced.

(Sd.) CHHAJU RAM, Member.

I agree.

(Sd.) MOHINDRA SINGH PANNUN, Member.

I agree.

(Sd.) SHAMSHER BAHADUR, Chairman.

The 6th May 1953.

#### Annexure

#### BEFORE THE ELECTION TRIBUNAL, JULLUNDUR

#### ELECTION PETITION No. 193 of 1952.

Election Petition presented to the Assistant Secretary, Election Commission India, New Delhi, on 25th April 1952.

Surain Singh son of Kishan Singh, Kamboh of Talwandi Dogran, Tehsil and District Amritsar—Applicant.

#### Versus

1. S. Waryam Singh S/o Arur Singh, Jat of Sultanwind.
2. S. Buta Singh Colonel S/o S. Arur Singh, Jat of Naushehra.
3. S. Ujagar Singh S/o S. Gurdit Singh, Jaura Pipal Amritsar.
4. S. Khem Singh S/o Nihal Singh of Tung Pain.
5. S. Atma Singh S/o Hari Singh, Kote Baba Dip Singh, Amritsar.
6. S. Uttam Singh S/o S. Lall Singh of Lal Singh of Bagga,
7. S. Tara Singh Singh S/o Labh Singh of Meharbanpura.
8. S. Sohan Lal S/o Amin Chand of Gopal Pura.
9. S. Mohindar Singh S/o S. Harnam Singh of Verka.
10. Shri Amin Chand S/o Shree Nathu Ram C/o Shree Kirpa Ram Vir, Municipal Commissioner, Amritsar.
11. Shree Pindi Dass S/o Sohan Lal, Durgayana, Amritsar.
12. Shree Jaswant Rai S/o Moti Ram of Kandowali Tehsil Ajnala.
13. S. Jogindar Singh S/o S. Shibdyal Singh of Gumtala.
14. S. Dalip Singh S/o Khem Singh of Thathian.
15. S. Santa Singh S/o Vir Singh of Sultanwind.
16. S. Sulakhan Singh S/o Dewan Singh of Sardar Metal Works, Jandiala Guru.
17. S. Sohan Singh S/o Kaka Singh of Chatiwind.
18. S. Gulab Singh S/o S. Dial Singh of Wallah.
19. S. Gurdip Singh S/o S. Lachhman Singh of Wadala-Bhitewad.
20. Lal Singh S/o Kehar Singh of Fatehpur.
21. Charan Singh S/o S. Nihal Singh of Tung Pain all in Tehsil and District of Amritsar—Respondents.

Election Petition under Part VI Chapter II of the Representation of People Act, 1951 and the Rules made there under for declaring the election of S. Waryam Singh respondent No. 1, the returned candidate from Amritsar Constituency No. 88 of the Punjab State Legislative Assembly void.

Election Petition No. 193 of 1952.

S. Surain Singh Versus S. Waryam Singh etc.

Order:

(Per Ch. Chhaju Ram, Member Election Tribunal).

**ORDER**

This is a petition by S. Surain Singh against S. Waryam Singh and others alleging that the petitioner is a voter in Zail Fateh Pur Rajputan in Amritsar Constituency No. 88 of the Punjab State Legislative Assembly, that a notice for the general election was issued fixing 26th October, 1951, to 5th November, 1951 as the dates for filing nomination papers and the respondents as well as others filed nomination papers for the above constituency, that after scrutiny on 9th October, 1951, the respondents were declared as duly nominated candidates for election to the Assembly, that election was held from 7th January, 1952, to 19th January, 1952, and after counting of votes Shri Waryam Singh, respondent No. 1, was declared elected to the General Seat in the above Constituency, that S. Waryam Singh respondent, the returned candidate, was proposed by village headmen and thus he procured assistance for the furtherance of his prospects as a candidate at the election from persons serving under the Government of the Punjab State and thereby committed a corrupt practice detailed in Section 123 of the Representation of the People Act, 1951, that the said respondent S. Waryam Singh was assisted in procuring votes by the said village headmen from their villages and Ilaqa, and thereby furthered his prospects as a candidate and was guilty of corrupt practice under the aforesaid Section 123, that agents or other workers of the said respondent hired or procured motor vehicles for the transport of electors and thereby committed major corrupt practice detailed in Section 123 of the aforesaid Act, that nomination papers of S. Buta Singh, respondent No. 2, a Lambardar, were improperly accepted and those of S. Shengara Singh, S. Bidhan Singh, and S. Faqir Singh were improperly rejected, and this materially affected the result of the election, that the boxes used were so constructed that they could be opened and ballot papers withdrawn therefrom without the seals being broken and as such the provisions of rule (21) were not fulfilled that the provisions of rule 46 (vi) were not complied with for the reasons given in para. No. 10 of the petition and for the reasons given above the petitioner prays that the election of S. Waryam Singh be declared void.

Respondent No. 1 S. Waryam Singh raised preliminary objections that the petition is barred by time, that it was not presented to the proper authority, that the deposit was not made in accordance with law, and that it is liable to dismissal for the reasons given in paragraphs Nos. 4, 5 and 6 of the preliminary objections. The following preliminary issues were framed:—

1. Is the petition barred by time?
2. Was the petition not presented to the proper authority?
3. Is the petition liable to be dismissed for reasons assigned in paragraphs Nos. 4, 5 and 6 of the preliminary objections?
4. Was the deposit not made in accordance with law?

*Issues Nos. 1, 2 and 4.*—The learned counsel for respondent No. 1 gave up the preliminary objections in respect of these preliminary issues, and in the circumstances these preliminary issues are decided against respondent No. 1.

*Issue No. 3.*—The learned counsel for respondent No. 1 contends that the allegations made in the petition are so vague as to entail their rejection. We have carefully gone through the allegations made in the petition and the lists annexed to the petition and find that these allegations are not so vague as to entail their rejection. At the time of recording evidence the petitioner will have to confine himself to these allegations and the facts given in the lists and he will not be permitted to add any new material or instance. We therefore hold that for the reasons given in paragraphs Nos. 4 and 5 of the preliminary objections we are not prepared to reject the allegations mentioned in the petition.

The learned counsel for the respondent No. 1 contends that the petition is liable to be dismissed on the ground that there is no allegation that the whole election is void. Respondent No. 4 is another candidate who succeeded in the election, and the learned counsel urges that there is no prayer for setting aside his

election and in the circumstances he contends that the petition should be dismissed. In para. No. 8 of the petition it has been mentioned that the nomination papers of S. Buta Singh respondent No. 2, a Lambardar, were improperly accepted and those of S. Shangara Singh, S. Bidhan Singh, and Faqir Singh were improperly rejected, and that this materially affects the result of the election. After the hearing of arguments in this case of the preliminary issues, the learned counsel for the petitioner made a statement on 1st December, 1952, that he did not wish to press the allegations contained in paragraph No. 8 of the petition. In the face of these circumstances we are of opinion that there is no necessity of considering the preliminary objection contained in paragraph No. 6 of the written statement.

For the reasons given above there is no force in the contention of the learned counsel for the respondent and the preliminary issue No. 3 is found against respondent No. 1.

Dated the 6th December 1952.

(Sd.) SHAMSHER BAHADUR, *Chairman.*  
6/12/52.

(Sd.) CHHAJU RAM, *Member.*  
6/12/52.

I agree.

(Sd.) M. S. PANNUN, *Member.*  
6/12/52.

I agree.

[No. 19/193/52-Elec.III/7080.]

**S.R.O. 968.—WHEREAS** the elections of Sardar Ajit Singh and Sardar Hukam Singh, as members of the House of the People from the Kapurthala Bhatinda Constituency of that House have been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Sardar Sardul Caveeshar, resident of Dharampur Lodge, Sabzi Mandi, Delhi;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, THEREFORE, in pursuance of the provision of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, PATIALA

V. B. Sarwate—*Chairman.*

Raghunandan Saran—*Member.*

E. M. Joshi—*Member.*

#### ELECTION PETITION NO. 268 OF 1952

Sardar Sardul Singh Caveeshar son of Sardar Kirpal Singh, resident of Dharampur Lodge, Sabzi Mandi, Delhi—*Petitioner.*

#### *Versus*

1. S. Hukam Singh son of S. Sham Singh, Member Parliament Paramjit Ganj, Kapurthala.
2. S. Ajit Singh S/O S. Sadhu Singh, Vill: Akalia Jalal, P. O. Dyalpura Bhal Ka, Distt. Barnala.
3. Shree Kapur Chand S/O Shree Narain Dass, Advocate, Faridkot.
4. L. Kharati Ram S/O Munshi Ram, Socialist Party, PEPSU Regional Office, Patiala.
5. Shree Ram Nath S/O Shri Wazir Mal, Ex-Minister, Jaitu.
6. S. Suchet Singh S/O S. Harnam Singh, Near Police Lines, Kapurthala.

7. S. Nirmal Singh s/o S. Tirlok Singh, House No. 860, Mohalla Mahikhana, Faridkot.
8. S. Gurdial Singh s/o Shanker Dass, Gali No. 5, Basti Balbirganj, Faridkot.
9. S. Bhupinder Singh Man, Minister, Pepsu, Government, Patiala.
10. Shri Gagan Das, resident of Faridkot, s/o Telu Ram, Basti Balbirganj, Faridkot.
11. Shri Gurditta s/o Shri Chura Waid, No. 4 Hadia Addharmi, Phagwara Tehsil, PEPSU, East Punjab Rly.
12. S. Kirpal Singh s/o Bishan Dass, resident of village Dhilwan, PEPSU—Respondents.

### ORDER

DELIVERED ON 12TH MAY 1953

The petitioner S. Sardul Singh Caveeshar and the respondents 1 to 8 contested the election held in January, 1952 to the House of the People from the Double Member Kapurthala Bhatinda Constituency in the Pepsu State. Respondents 1 and 2 S. Hukam Singh and S. Ajit Singh who were candidates set up by the Akali Party were declared elected, the former to the general seat and the latter to the reserved seat. The petitioner and the respondent No. 7 who were nominees of the Congress Party were both defeated.

2. The petitioner challenged the election of respondents 1 and 2 and asked for a declaration that their election was void and claimed the seat of respondent No. 1 for himself and also a seat for respondent No. 7 in place of respondent No. 2. In the alternative he asked for a declaration that the election was wholly void. He alleged that respondent No. 1 had committed a corrupt practice by publishing false and defamatory statements in relation to his candidature in a leaflet and in two Newspapers the *Spokesman* and the *Prabhat* owned by respondent No. 1 or under his control and that this had seriously prejudiced his election. He further alleged that respondent No. 1, who was President of the Shromini Akali Dal, which was a communal organisation of the Sikhs and was often styled as the 'Panthic Party', and the Respondent No. 2 who was a member and representative of the aforesaid Organisation, committed the corrupt practice of undue influence by making a systematic appeal to the general body of Sikhs on the ground of religion or community for the furtherance of the prospects of their election and this propaganda was carried on mainly through four Newspapers, viz., *Spokesman*, *Ajit*, *Prabhat*, and *Akali Patrika*. The petitioner alleged that all the above Newspapers represented the 'Panthic' point of view and the Respondent No. 1 was himself the Editor, Printer and Publisher of '*Spokesman*', while the policy of the other three Newspapers was guided by respondents No. 1 and 2 and Master Tara Singh, who was the leader of the Shromani Akali Dal. The petitioner also alleged that respondent No. 4 Kharat Ram who was a candidate for the reserved seat was not allotted the ballot box with a proper symbol specially marked for the reserved seat and was wrongly treated by the Returning Officer as a general seat candidate, that these illegalities seriously prejudiced the election of respondent No. 4 and resulted in his defeat and that this vitiated the whole election.

3. The petition was contested by respondents No. 1 and 2. Respondent No. 4 supported the petition. Respondents No. 1 and 2 raised a preliminary objection to the maintainability of the petition on the ground that four other persons whose nominations were accepted but who later withdrew were necessary parties as they were 'duly nominated' candidates within the meaning of Section 82 of Representation of People Act, 1951, and as they were not joined the petition was liable to be dismissed. The petitioner then sought leave to join them as respondents and their names were tentatively brought on the record as Respondents 9 to 12 by an order dated 30th September 1952 leaving the effect of late joinder to be finally decided at a later stage. Upon objections raised to their joinder preliminary issues were framed by us which we dealt with in our order dated 29th November 1952, which is Annexure 'A', of this order. We held that respondents 9 to 12 were necessary parties and the Tribunal had power to order their joinder under the provisions of the Civil Procedure Code. But in view of the fact that these respondents were deprived of their right to recriminate due to the laches of the petitioner we further held that the petitioner could not be permitted to claim the relief about a seat for himself or for the respondent No. 7.

4. Respondents 1 and 2 denied the Commission by them of any of the corrupt practices as alleged by the petitioner and denied all adverse allegations. They stated that they had no connection with the policy of *Ajit*, *Prabhat* and *Akali Patrika*. Respondent No. 1, however, admitted that he was the Editor, Printer

and Publisher of *Spokesman* but further stated that the impugned defamatory statement published in the *Spokesman* was published while he was absent from Delhi and such publication was without his knowledge, consent or connivance. He added that soon after the election when he reached Delhi and noticed that statement in the 'Spokesman', he took steps to convey to the petitioner that had he been aware he would not have permitted publication of that statement but during his absence the Editor in charge of the paper having come to know about the facts allowed the same to be published believing them to be true.

**5. The issues arising out of the pleadings of the parties are as follows:—**

1. (a) Did respondent No. 1 or his agent, or any other person with his or his agent's connivance publish the statements A-1 and B-1 appearing in 'Spokesman' and 'Prabhat' respectively and the leaflet A-2?
- (b) Were these statements false and does their publication as alleged in para. 9 of the petition constitute a corrupt practice within the meaning of Section 123 (5) of Representation of People Act, 1951?
2. (a) Did respondents No. 1 and 2 or their agents or others on their behalf and with their connivance make a systematic appeal to the general body of Sikhs on the ground of religion or community to vote for them and did they carry on propaganda against the petitioner through the four newspapers 'Spokesman', 'Ajit', 'Prabhat', and 'Akali Patrika', as alleged in para. 11 of the petition and the particulars given in para. III of the list under Section 83 (2) of Representation of People Act, 1951 and does this appeal amount to a corrupt practice within the meaning of Section 124 (5) Representation of People Act of 1951?
- (b) Does the above appeal amount to undue influence and corrupt practice within the meaning of Section 123(2) of Representation of People Act, 1951?
3. Has the result of the election been materially affected by any corrupt practice or by the Returning Officer wrongly treating Kharati Ram respondent No 4 as a candidate for the General Seat, when he was a candidate for the reserved seat on'y?
4. If any corrupt practices are proved, does the respondent No. 1 satisfy the Tribunal that he is entitled to the benefit under Section 100(3) of Representation of People Act, 1951?
5. Is the petitioner entitled to a declaration that the election is wholly void or that the election of the Respondent No. 1 or of the Respondent No. 2 is void?
6. What is the appropriate order to be made under sections 98 and 99 of Representation of People Act, 1951?

6. *Issue 1.*—In our opinion the statements about S. Caveeshar being involved in the Insurance fraud case have not been proved to be false which is an essential requirement of the corrupt practice under S. 123(3) Representation of People Act, nor has it been proved that the Respondent No. 1 either believed them to be false or did not believe them to be true. The statement in question in the *Spokesman* of 23rd January 1952 has been set-forth in para 6 of the petition and is as follows:—

"Who is who of Congress candidates.

Caveeshar figuring in 4 crores alleged fraud case—Giani Zail Singh a convicted criminal—Shiv Singh arrested for alleged possession of liquor.

**BOMBAY:** Shri Sardul Singh Caveeshar who is opposing S. Hukam Singh the Akali Chief as the Congress Nominee for the House of the People from Kapurthala-Barnala-Bhatinda Constituency is being prosecuted for an alleged breach of trust along with Seth Damodar Swarup, Lala Shanker Lal, Mr. P. N. Kaul and others.

The case involves an alleged fraud of Rs. 4 crores against three Bombay Insurance Companies—Jupiter, Tropical and Empire."

The issue of the *Spokesman* in question is Annexure A of the petition, the statement being marked A-1. This statement was reproduced in the *Urdu Prabhat* of 23rd January, 1952 with the addition that about the petitioner it was further stated that in 1950 he had fraudulently obtained an advance of Rs. 27 lakhs from the Jupiter Company and that one of his associates had made improper use of Government securities of the value of 50 crores rupees; there was also an improvement in the statement published in the *Prabhat* in that in the body of the statement the

amount involved in the fraud case was mentioned as 6 crores in place of 4 crores. This issue of *Prabhat* is annexure B of the petition and the statement in question is marked B-1. The statement A-1 appears also in a leaflet which is annexure A-2 of the petition with the following additional matter:

"Sardar Sardool Singh Cavecshar is on Rs. 1,50,000 bail these days—For more revelations wait for the next issue dated 23rd January of the *Spokesman*".

The fact of the petitioner being on bail of Rs. 1,50,000 finds mention in the statements published in the *Spokesman* and the *Prabhat* also but the petitioner did not reproduce it as an offending statement in paras. 6 and 7 of the petition. In para. 10 also which is referring to Annexure A-2 it was not alleged that the fact of the petitioner being on a bail of Rs. 1,50,000 was in any way questionable.

7 About the statements A-1 and B-1 it is alleged in para. 9 of the petition that they are false and the respondent No 1 either believed them to be false or did not believe them to be true in relation to the petitioner's candidature, that they were calculated to prejudice the prospects of his election and that the news were so very stale that there was no point in their publication at this stage except to prejudice the election prospects of the petitioner. It is not, however, indicated in the petition in what particulars and to what extent these statements were considered false. This indication was given only when the petitioner came into the witness-box and stated thus:

"There was no prosecution against me for misappropriation of a sum like 4 crores and it is not also a fact that I was required to give bail for Rs 1,50,000" He added, "The prosecution had been started against me and bail had been granted to me about a year before these statements appeared in these papers. I mean that the police had produced me before the court and required me to furnish bail a year before the election while the charge-sheet was put up six months after the election. But the reports in the papers meant to convey as though the prosecution had already been launched and that this was just a fresh discovery."

In cross examination he stated that the bail granted to him was of Rs. 50,000 only, but did not mention the amount involved in the case against him. He admitted that the investigation by the police was going on all along from the time of his arrest up to the time of the submission of the charge-sheet against him by the police.

8. Since the petitioner in his petition did not take exception to the statements in respect of the amount of his bail, he cannot be allowed to contend now that the amount of bail mentioned in these statements was false. Moreover, beyond his own word, he has adduced no evidence at all to show that the amount of the bail was not really Rs. 1,50,000. He could have easily produced a copy of his bail bond to show for what amount he was required to give it. We cannot, therefore, find it proved that the statements in question were false as regards the amount of bail mentioned in them.

9. We next proceed to consider the statements as regards his alleged prosecution in the fraud case and the amount involved therein. Obviously the statements on these points are a reflection on the petitioner's personal character and have nothing to do with his candidature, and yet in the petition the averment was about these being false in relation to his candidature. The objection of the respondents is that when in the petition it was not specified at all in what manner the alleged statements in relation to his personal character could be regarded as false and on the other hand an indication was given that they were false in relation to his candidature, the petitioner should not be allowed to show now that they were false in relation to his personal character nor should the Tribunal scrutinize the statements in respect of the particulars that relate to the personal character. This objection of the respondents, though technically it may appear to be well founded, cannot be allowed to prevail as we feel certain that the petitioner really meant to question the statements in relation to his personal character and that in para. 11 of the petition he meant to convey that they were made because of his candidature in the election as opposed to withdrawal from it, and this did not necessarily mean that the ground of their being in relation to personal character was not to be pressed; there was only an inadvertent omission to state it in so many words. We proceed to discuss the statements on this assumption that they have been called in question as being false in relation to the personal character of the petitioner. It is the common case of the parties that at the time of the publication of the statements in January 1952 there was not against the petitioner any prosecution going on in the

real sense of the term in as much as he was not actually on trial in a court of law, but the petitioner had been arrested on 8th February 1951 and produced before a Magistrate and granted bail. The police investigation had then started and was still going on and eventually as a result of that investigation the police submitted a charge-sheet in court against the petitioner and his associates on 3rd June 1952 under sections 120 B, 409, 109, 34, 477 A and 511 I. P. C. In the statements in question the respondent perhaps used the word prosecution as understood in the popular sense of setting the law in motion, although an attempt has been made on his behalf to show that the use of the word prosecution in reference to the inquiry into the offences at that stage could not be inappropriate according to the provisions of the Criminal Law. In his evidence the petitioner himself referred to that stage as "prosecution" although he qualified it by adding "I mean police had produced me in the court and required me to furnish bail a year before the election". The use of that term was not intended to convey nor could it convey more than what the full details and particulars of the proceedings as given in the reports in the *Spokesman* and the *Prabhat* would bring to the reader's minds as the true picture of the petitioner's character.

10. As regards the amount involved in the case the petitioner only says that it was not as much as 4 crores but he does not disclose how much it actually was. The respondent has produced two charge-sheets submitted by the police against the petitioner and his associates on 3rd June 1952 and the sums mentioned in them aggregate to about 1½ crore of rupees in respect of two Insurance Companies, the Empire of India and the Jupiter General. The statement of the petitioner on oath shows that these charges do not cover all the items about which the investigations were started and that further investigation in respect of other items is still going on. The petitioner has not produced a copy of the First Information Report made against him in the matter to show what according to it was the total amount involved; under the law he being an accused could be granted a copy of the First Information Report and this would have been the best evidence when theonus is on the petitioner to prove that the statements are false. In view of what has been said above, we cannot find that the statements in question are proved to be false as regards the amount involved and stated in them.

11. The stand taken by the petitioner while in the witness-box is that the statements in question though not totally false were quite exaggerated in some respects. S. 123(5) requires that the petitioner should not only show the statements to be false but also that the person making them knew them to be false or did not believe them to be true. Ordinarily if there is some truth in the statements it becomes difficult to suppose that another person could not have believed them to be true. There is no evidence given by the petitioner to show how the respondent S. Hukam Singh who ultimately is to be made responsible for the publication could be supposed to have known the statement to be false or not to have believed it to be true. The *Prabhat*, it would seem, copied the statement from the *Spokesman*. So the respondent No. 1 as the declared Editor of that paper would be responsible in respect of publication in the *Prabhat* also. We accept S. Hukam Singh's explanation that though his name was appearing as Editor in every issue of the paper, actually during this relevant period the paper was in the hands of Satindra Singh R. W. A. Satindra Singh has stated and to that extent we are satisfied that his statement is true that he read this news report in the "Cross Roads" of Bombay in its issue dated 11th January 1952. The *Cross Roads* is Ex. 1-R/12 and the borrowing is self evident from the similarity of the language used in the report appearing in the *Spokesman*. The only difference made is that where in the headlines of the *Cross Roads* which is a Communist Party paper the emphasis is upon the Socialist Leader, Seth Damodar Swarup, the emphasis in the headlines of the *Spokesman* is put upon S. Caveeshar petitioner, the congress candidate in the election. We have no doubt that Satindra Singh having noticed this report in the *Cross Roads* thought of the possibility of the matter being utilized as good election propaganda in favour of his master S. Hukam Singh who was being opposed by S. Caveeshar and so giving prominence to S. Caveeshar's name published the report on the front page in bold type. We do not believe Satindra Singh on his statement that before he allowed the news to be published in the *Spokesman* he had obtained copies of the reports of Insurance Companies and verified that there was material in the reports on which the proceedings against S. Caveeshar could have been founded.

12. The respondent has placed before us the annual reports and audited accounts of the Jupiter Company for the years 1949, 1950 and 1951 (Exs. 1-R/4 to 1-R/6) and also of the Empire of India Company for the same years (Exs. 1-R/8 to 1-R/10) and of the Tropical Company for 1949 and 1950. His counsel has taken us through these reports. The reports bear out that the associates of the petitioner in those concerns were Seth Damodar Swarup, Lala Shanker Lal and Mr. P. N. Kaul. Lala Shanker Lal was the Chairman of the Board of Directors of the Jupiter Company

and was also the Managing Director of this Company, while Mr. P. N. Kaul was its Director-in-Charge; Lala Shanker Lal was also the Managing Director of the Tropical Company. Seth Damodar Swarup became the Managing Director of the Empire of India Company in October, 1950. According to these audit reports all was not well about the three Insurance Companies, and in February 1951 Lala Shanker Lal, Seth Damodar Swarup and Mr. P. N. Kaul were arrested by the police on various charges and then in July 1951 the Government of India took action under Section 52-A of the Insurance Act of 1938 and appointed Administrators to manage the affairs of the Companies. The petitioner who was arrested at the same time was himself the Managing Director of the People's Insurance Company and the New Hindustani Bank. The last mentioned Bank has, we are told by him, gone into voluntary liquidation.

13. A perusal of reports of the Jupiter, Empire of India and Tropical Insurance Companies shows that some of the transactions of these Companies appeared to the Auditors to be highly irregular and the petitioner was privy to some of these transactions. The Report of the Jupiter Company for 1949, on page 8, shows that Government Securities held by the Company of the face value of Rs. 30 lakhs were sold and pledged on or about 17th January 1949 and out of the sum thus raised a loan of Rs. 25 lakhs odd was shown as advanced to the petitioner on 17th January 1949; the report discloses that the petitioner did not receive the amount of the loan himself but directed its payment to the Tropical Insurance Company of which the Managing Director was Lala Shanker Lal, he being also the Managing Director of the Jupiter. This loan was explained to the auditors to have been secured by an equitable mortgage of the Delhi properties of the petitioner and to have been finally squared on 27th December 1949. The auditors wanted to see the documents of valuations of properties to verify the loan transaction but were told that the documents of title had been returned when the loan was squared up. The petitioner has admitted before us that his Delhi property is worth not more than Rs. 20 or 30 thousand and most of it stands in the name of his *benamidars*; the auditors naturally felt doubtful how a big loan could be advanced on the security of such meagre property. The petitioner says that he wanted to purchase another property with this loan and to offer that as security but the transaction did not come through. Another such transaction was a loan of Rs. 5,30,000 to the petitioner on the security of 7,134 shares of the People's Insurance Company Ltd. of the face value of Rs. 100 each *vide* page 9 of the Report, but the auditors were not satisfied about the market value of these shares and were therefore unable to ascertain whether the loan was fully secured or not. The petitioner does not appear to have been directly concerned in the other transactions of the Jupiter Company to which objection was taken by the auditors with the exception of the sale to him of 4,475 ordinary shares of this Company, *vide* page 9 of the Report. The Report of the Empire of India Company for 1950 shows that the auditors were not satisfied about the transactions of this Company involving large sums of Rs. 83 lakhs and 3½ crores. They also took objection to a loan of Rs. 71 lakhs to 12 parties, to the repayment of this loan and then to the utilization of this amount towards the grant of another single loan of Rs. 77½ lakhs. As regards the Tropical Insurance Company, the report for the year 1950 shows that a sum of Rs. 7,40,500 was paid to some persons, but the consideration of the payment was not disclosed to the auditors, nor was any receipt or acknowledgement produced in support thereof; the payment was the subject of an enquiry by the Administrator of the Company; also the auditors took objection to the investment of the funds of this company to the extent of Rs. 4,14,910 in the shares of other joint stock companies which were not being quoted in the market and were not bringing any income to the Tropical Company in the shape of dividends. In his evidence the petitioner admits the loans of Rs. 25 lakhs odd and Rs. 5 lakhs odd taken by him from the Jupiter Insurance and also admits his association with Lala Shanker Lal for the last 30 years; he admits further that his own cousin Bhai Ardaman Singh of Baghlan is an accused in a separate case in respect of, as it appears to us, the Empire of India Company.

14. When we state all this we do not mean to give findings on such of these matters as may be the subject of inquiry in the criminal proceedings nor to record the petitioner's admission on any points as could be used against him at the trial. We have drawn attention to these things only to point out that if the auditors' reports of the Companies make such disclosures, a common man may not be blamed for inferring that the report in the *Cross Roads* about the investigation by the police on charges of misappropriation etc. may be true. We cannot therefore assume that Satindra Singh, whether he himself looked up the reports or not, could not have believed them to be true.

The petitioner may think that the statement about the charges against him is damaging to his personal character and the information conveyed to the electorate

through the newspapers prejudiced the prospects of his election. As a public man the petitioner could be expected by the electorate to bear irreproachable personal character, and it was in our view not an improper thing to tell the electorate on what charges the petitioner was being proceeded against. Truth is generally a good defence against a charge of libel. The petitioner by offering himself as a candidate for election and so to be chosen as a representative of the people may be taken to have himself invited fair comments on his character. Before the people voted for him and put him in the position of a public man, they would be entitled to know if he bore the kind of character they should expect their representative to be possessed of. It is for this purpose that S. 123(5) makes publication of only false statements a corrupt practice. If the statements published are entirely false and baseless no one will be allowed to benefit by them, and about false statements it should not be difficult to infer that the publisher could not have believed them to be true. But where as in this case there was some basis for the statements published and it is not found that they were false, though perhaps to some extent exaggerated, it becomes difficult to find that the publisher could not have believed them to be true and so to bring them within the prohibition in S. 123(5).

15. Thus one of the essential ingredients of the corrupt practice under S. 123(5) has not been established. We have no doubt that the statements were published in the *Spokesman* and the *Prabhat* with the object of prejudicing the prospects of the petitioner's election. It may be that S. Hukam Singh had no hand in publishing the statement in his paper *Spokesman* and that Satindra Singh whom he had put in charge of the paper published it on his own responsibility. S. Hukam Singh is, however, answerable for this act of Satindra Singh as much as though he had caused publication of the statement himself. He had put Satindra Singh in charge of the paper, and the *Spokesman*, as we find from the other issues, was busy in carrying on propaganda in support of the election of Sardar Hukam Singh and other Akali candidates. S. Hukam Singh does not say that Satindra Singh had been charged not to write anything in the way of election propaganda. Satindra Singh published the statement in the *Spokesman* as agent of S. Hukam Singh and as we have said the *Prabhat* only copied it from the *Spokesman*. We accept Sardar Hukam Singh's statement that he was personally unaware of this report against S. Caveeshar appearing in his paper till after the election and that when he found it he at once wrote an apologetic letter to S. Caveeshar that he would not have allowed the matter to be published if he had been made aware of it. This no doubt shows the fair spirits in which S. Hukam Singh was anxious to see the election conducted without reference to personal matters of the candidates being canvassed for the purpose. The apology is however hardly any palliative of the mischief which the propaganda was intended to do or may in fact have done.

16. This mischief Satindra Singh undoubtedly intended when he caused the publication of the statement in the *Spokesman*. The matter was noticed by him evidently after the *Spokesman* of 16th January had been printed and so could be put at the earliest in the issue of 23rd January. This would be ready for circulation only four days earlier and so after a considerable part of the constituency had already gone to the polls—polling had started on 15th January 1952 and was to close on 24th January 1952. We accept the evidence given on the side of the respondent that the *Spokesman* was printed at the 'East Panjab Printing Works' at Delhi and that two thousands copies of this issue of 23rd January were ready to be put into circulation on 19th January 1952. We also accept that before that day this report was not available to any one through the *Spokesman*.

17. The petitioner's case is that because this delay seemed inevitable in giving publicity to the report through the *Spokesman* the device of circulating the report much earlier by the issue of a leaflet annexure "A-2" had been hit upon, and this had been published and distributed broadcast earlier than the 19th. The suggestion is that if Satindra Singh was responsible for the report in the *Spokesman*, he was responsible for bringing out and circulating annexure "A-2" also. We are asked to infer this from the fact that "A-2" is a word to word copy of the headlines of the report appearing in the *Spokesman* and further mention that more details may be watched for in the *Spokesman* of the 23rd. The leaflet does not mention the name of the press where it was printed and we are asked to infer that it must have been printed at the same press where the *Spokesman* of the 23rd January was printed. We are asked also to believe that Satindra Singh in his enthusiasm to help S. Hukam Singh in election with his discovery of this report in the *Cross Roads* must have got annexure "A-2" printed there. Beyond asking us to assume this probability which one can base on suspicion, the petitioner has not produced any legal evidence to trace the origin of the leaflet "A-2" to the respondent. In fact it was argued on respondent's behalf that the petitioner himself got that one leaflet printed to make out a false charge in the

petition. We are not prepared to make any such bold charge against the petitioner but we do subscribe to the view that the petitioner has not given adequate proof to enable us to find affirmatively that the respondent or one of his men, got it published. Darshan Lal, R.W. 1, the printer of the *Spokesman*, was not even questioned if annexure "A-2" was printed at his press, nor was the respondent S. Hukam Singh questioned about it when he was in the witness-box. It is also pointed out on behalf of the respondent that if the intention was to reach a larger class of people through the leaflet it should have been issued not in English but in the local language, Panjabi. The petitioner attempted to prove the circulation of the leaflet by the respondent by giving some evidence that it was enclosed in the folds of the *Spokesman*. Hari Kishan Dass, P.W. 3 and Gurdial Singh, P.W. 22 speak of having seen it with the *Spokesman* issue Annexure "A". We do not think this evidence to be credible. If "A-2" was intended to go out as advance information of the report against S. Caveeshar we do not see the point of its circulation along with the issue of *Spokesman* "A". It does not seem however necessary to pursue this matter further because in our view "A-2" goes the same way as annexure "A-1", neither of them making out the case of corrupt practice under Section 123 clause (5) because the statements contained in them have not been proved to be false and known to the publisher to be false, or not believed by him to be true.

18. The charge of corrupt practice not being made out, it becomes unnecessary to consider how far the circulation of the report may have damaged the prospects of the petitioner's election. The petitioner in his evidence concedes that the people would have thought the same about him if the barest and true facts of the police investigation and of his arrest and bail had been published. It is not necessary to determine how many voters may have actually turned away from the petitioner on reading this report in the *Spokesman* and the *Prabhat*. The probability is that not many people were affected because the *Spokesman* could be available only after the 19th January when more than half the constituency had already gone to the polls and also because the paper was not much in circulation in the constituency and could be read only by a small percentage of voters who were English knowing. *Prabhat* being an Urdu paper had a wider circulation and could influence many more people but the report appeared in it on the 23rd January and so could have affected the minds of the voters who were to go to the polls on the last two days only. Having however found that the statements were not entirely false we must find on issue I that no corrupt practice under Section 123(5) has been proved.

Issue No. 3.—Kharati Ram, respondent No. 4 was a nominee of the Socialist Party and belongs to a Scheduled Caste. At the time of filing his nomination papers Kharati Ram had deposited only Rs. 250 as security which would be sufficient only for a candidate belonging to the Scheduled Castes. The symbol of the Socialist Party was "Tree" and Kharati Ram was allowed this symbol by the Returning Officer. However, this "Tree" was not within a circle and the petitioner contends that under the rules the symbol of a Scheduled Caste candidate like him ought to have been enclosed within a thick black circle. Kharati Ram was, according to the petitioner, thus wrongly treated as a general seat candidate which prejudiced him greatly in the election. Section 100(2)(c) of the Representation of the People Act, 1951 is relied on in this connection as making the election void. Kharati Ram as P.W. 21 deposed, "Tree was my election symbol. But the symbol given to me did not bear a ring round it. The symbol allotted to the Scheduled Caste Federation was to be within the ring and I had been instructing the voters that the symbol of tree would be within a ring and for such symbol they should vote. But the voters at the time of casting votes were confused because they did not see any symbol of tree within the ring. I think that many voters could not cast their votes for me because of this confusion with the result that I lost in the election". In cross-examination he adds, "In describing the symbols that I claimed with the nomination papers I had not mentioned that it should be within a ring. He adds also, "The Socialist Party had not nominated any candidate for the general seat in this constituency."

On behalf of the petitioner no rule has been pointed out to us laying down that in these circumstances the symbol of Tree assigned to Kharati Ram should have had any circle around it. Our attention has been invited to the instructions contained in para. 31(a) of the Election Guide prepared by the Chief Electoral Officer, Pepsu. This does not in terms lay down that a Scheduled Caste candidate must invariably have his symbol within a circle. It points out that in two member constituencies each party may set up two candidates, one for the general seat and the other for the seat reserved for the Scheduled Castes; the symbol that may have been already reserved for the party will be assigned to both the official

candidates of the party, the only distinction being that the symbol in the case of the Scheduled Castes will be the particular symbol enclosed within a thick black circle. The circle was thus a device to be used for distinguishing the symbol of the Scheduled Caste candidate where in the same election there was another candidate with the same symbol. This election guide does not specifically say what the procedure is to be where as in this case a party nominates a candidate of the Scheduled Castes only in a two member constituency and no second candidate. On behalf of the Respondent No. 1 we have been referred to the letter No. Camp./2/Elec./51, dated 10th September 1951 from the Election Commission of India which seems to make it clear that in a case like the present where in a two member constituency a party nominates only one candidate and this candidate happens to belong to a Scheduled Caste, the party's symbol assigned to him need not be encircled. The last sub-para. of para. 31(a) of the Election Guide sets forth the general rule that the Returning Officer shall assign to a candidate the symbol earmarked for a party if such candidate is the only candidate belonging to that party, and this rule was followed in this case by assignment of the symbol "Tree" to Kharati Ram. Kharati Ram did not ask for a circle around the tree and nobody can be heard to make grievance now of the absence of the circle. In fact if the "Tree" had been placed in a circle without a request for it, this might justifiably have been a grievance. In our opinion there has been no non-compliance in this case with any provisions of law or any orders or rules, and the election is not liable to be declared void on any such ground.

20. *Issue II.*—On the point of corrupt practices by propaganda through newspapers, the petitioner has relied as already stated upon the issue of four newspapers—*Spokesman* of Delhi and *Prabhat, Ajit* and *Akali Patrika* of Jullunder. The *Spokesman* is an English Weekly published by the respondent No. 1 S. Hukam Singh himself. *Prabhat* and *Ajit* are Urdu Dailies and *Akali Patrika* is a Panjab Daily—these three being, it is alleged, the organs of the Akali Party of which S. Hukam Singh was the nominee in the General Seat and S. Ajit Singh respondent No. 2 the nominee in the Reserved Seat. The nominations were accepted on 1st December 1951 while the polling in this parliamentary constituency took place from 15th to 24th January, 1952. The issues of these papers published between 1st December, 1951 and 24th January, 1952 are accordingly exhibited by the petitioner after marking on them the offending passages which are said to make the corrupt practice of undue influence under Section 123(2), Proviso (ii) or of systematic appeal on ground of religion or community under Section 124(5) of the R.P. Act. To make the subsequent narrative intelligible it is necessary to describe here the scheme which has been followed by the petitioner in giving distinguishing marks to the large number of newspaper issues exhibited in the case. The tribunal has not changed that scheme in the trial.

21. The issues of the *Spokesman* are marked by a single letter of the alphabet like A, B, C, etc., the one or more passages in each issue being distinguished by a serial number placed after the letter as A-1, A-2, B-1, B-3, etc.

The issues of *Ajit* are marked by double lettering like AA, BB, DD, etc.—the different passages in each issue being distinguished by a serial number such as AA-1, AA-3, BB-4. The *Akali Patrika* issues for December 1951 are marked with triple lettering such as AAA, BBB, to ZZZ and those for January 1952 with four letters such as AAAA, BBBB, etc., the different passages in each issue being distinguished by a serial number put after the lettering. The *Prabhat* issues are marked by the letter A followed by a letter of the alphabet such as AxA, AxB, AxC and so on to AxZ and the subsequent issues by the double letter AA again followed by letters of alphabet like AAxA, AAxB, AAxE, etc.; here again the different offending passages of each issue are indicated by the serial number placed after the distinguishing letters used for marking the issue, such as AAxB-1, AAxA-3 etc. The distinguishing marks made in this way will enable us to know at a glance in how many issues of each paper a particular type of propaganda has appeared.

22. It should be stated here that in all these papers use is made very freely of words and phrases like 'Panthal', 'Panthalic Party', 'Panthalic Ticket', 'Panthalic candidate', 'Panthalic box' or 'Panthalic Vote' in canvassing support for the party of which the respondents 1 and 2 were the nominees. This as a recognized political party for elections is officially designated as Akali Party. The Akali Party is in a sense a communal organisation because its membership is open only to men belonging to Sikh community who are followers of the Sikh religion. For purposes of election the party was allowed the use of a symbol "bow and arrow" (*Tir-Kaman*) which is intimately associated in the mind of every believing Sikh with one of their greatest Gurus—10th Guru Govind Singh. Besides being a great spiritual head, Guru Govind Singh was reputed to be a great archer and political leader.

and is held by all Sikhs in high veneration. For having been a great exponent of archery, the *Tir-Kaman* has come to be regarded as his peculiar symbol and he is more often than not referred to as '*Tirkaman Wala*' (the wielder of bow and arrow). We think that the Akali Party had undoubtedly this association of the symbol in their minds when they claimed the bow and arrow symbol as the party's choice. Having secured that symbol it became an easy matter to exploit its sacred association for the party's propaganda amongst believers in the Sikh religion.

23. The pleading of the petitioner about the corrupt practices which he sought to make out of the propaganda in these four newspapers is contained in paras. 11 and 12 of the petition which are as under:—

"11. That a systematic appeal was made by Respondent No. 1 and 2 or on their behalf or with their connivance, to the general body of Sikhs on the ground of religion or community for the furtherance of the prospects of their election in the '*Spokesman*', the '*Ajit*', the '*Prabhat*', the '*Akali Patrika*' and on the platform. They were represented as 'Panthic candidates' signifying thereby that they solely stood for the interests and welfare of the Sikh community and religion. For the Sikhs the expression 'Panth' has a religious sanctity and to vote a Congress candidate, which the Petitioner was, as against Panthic candidates, which the respondents No. 1 and 2 were, became an act of sacrilege. Respondents No. 1 and 2 are foremost leaders of the Panthic Party and the Panthic Party claims to stand exclusively for the protection and preservation of Sikh rights, culture and solidarity. It was propagated both in the Press and on the platform that vote for the Congress candidate meant political '*Hara Kiri*', suicide *en masse* of Sikhs. The 'Panthic' leaders, including Respondents No. 1 and 2 and Master Tara Singh, agitated that the Congress was hostile to the Sikhs generally and had even made lakhs of them to become apostates and that to save themselves from extinction the Sikhs must vote against the Congress and for the 'Panthic' candidates.

12. That undue influence was brought to bear upon the electors by propaganda on the lines indicated in para. 11 *supra*. This materially affected the result in favour of Respondents No. 1 and 2 and caused serious prejudice to the Petitioner and Respondent No. 7 (Sardar Nirmal Singh) who was a Congress candidate for the Reserved Seat."

24. The petitioner does not rely upon and has not proved any propaganda on the platform except the reports thereof as may be found in the impugned passages from the exhibited newspapers. Para. 11 of the petition seems to state the effect of the propaganda rather than refer to the different heads under which the offensive statements will be found to fall. We have read critically all the passages and the counsel on both sides referred to and commented upon a good number of them, some however being omitted as they were considered to be innocuous. These which were referred to would seem to fall under the following general types:—

- (A) Passages in which there is reference to 'Panthic' to tell the readers that the candidates of the Akali Party are to represent the 'Panth' or that '*Tirkaman*' is symbol of the 'Panth', or that vote should be given to the 'Panth'. Such references are to be found in every paper and 'Panth' is a most general expression used to refer to the Sikh electorate *vis a vis* the elections. Exhibits EE-3, HH-1, WW-1, Ax-B-1, Ax-I-1, Ax-I-2, AAA-3 and EEE-3 may be mentioned as illustrative of many others of the same type.
- (B) Mention of 'Panthic candidate', 'Panthic Vote', 'Panthic future' and such like phrases used in references to the Akali Party—instances being AA-4, FF-1, Ax-B-1, Ax-K-1, EEE-1, E-2 and H-3.
- (C) Criticism of Congress Policy and of attitude of the Congress Party towards the Sikh community or sometimes towards Sikh religion by use of expressions like the following:—
  - (i) Congress bent upon to defame the Sikhs (BB-1).
  - (ii) Congress enemy of the 'Panth' and the Sikhs (DD-3, KK-1, LL-1, EEEE-5).
  - (iii) Congress determined to stab 'Panth' in the back (GG-1).
  - (iv) Congress Government crushing the Sikhs (HH-2, LL-1, OO-3, UU-2, SSSS-1).

- (v) Congress humiliating the Sikhs and making the Panth miserable (JJ-3, KK-2, II-3).
- (vi) Congress a Hindu or Communal body or Congress dividing the Sikhs and no Sikh to vote for Congress (OO-4, NN-3, MM-2, G-3, HHHH-1).
- (vii) Sikhs not to vote for Congress because Congress Government imposed curfew at Shri Darbar Sahib, Amritsar and Sikhs assembled before Akal Takhat were fired upon (AxP-1, A-3) and because it has deprived the Sikhs of Nankana Sahib (AxQ-2).
- (viii) Congress interfering with Sikh religion (EEE-2, RRR-1).

(D) Your vote is a trust of the Panth or reserved for the Panth (SS-2, WW-1, CC-2, GG-2, AxH-2, AxO-1, TTT-5, BBBB-2).

(E) Panthic sentiments and regard to be tested in the Elections (BB-2, II-2).

(F) Waxing phase of the Panth (FF-4).

(G) Not to vote for Panthic candidate will be political *Hara Kiri*. Suicide en masse (G-3).

5. The above list may be taken to be illustrative of the nature of statements appearing in the impugned passages and the references given under each head are only a few out of the many which may be found in them. We may refer more particularly to the following passages upon which much stress was laid on behalf of the petitioner as showing definitely an appeal on ground of community or religion and in some cases even amounting to undue influence.

- (a) Congress Government interfering with Sikh religion (EEE-2).
- (b) To over-thrown Congress is a holy crusade (KKK-1).
- (c) To vote against the 'Panth' is to turn against the Guru and to commit treason (QQQ-1).
- (d) The threatening clouds over Sikh religion (QQQ-5).
- (e) Political power is necessary to protect the Sikh religion (RRR-2).
- (f) Vote for those who make welfare of the Sikh religion their aim of life (RRR-2).
- (g) Our Guru as well as ancestors have borne untold hardships for the sake of our Panth (TTT-4).
- (h) In respect of Sikhism and Community we can never be separated (DDDD-3).
- (i) The race of Sikhs will not vote for the Congress which is conspiring to cut at the root of the Panth (HHHH-1).
- (j) O-Moths (lovers) of the Panth, let the Satguru shield you (PPP-1).
- (k) We shall glorify our community (PPP-2).
- (l) Earnest Appeal of Master Tara Singh to the community (Kom) (AA-5—AAA-4).
- (m) Votes claimed in the name of Guru and his saffron flag (AxB-2), (CCC-3).
- (n) Vote for the box with *Tirkaman* of the Guru. The Guru was using a bit of gold at the tip of each of his arrows (CCC-1) to provide for the coffin of the victim who was killed by it.
- (o) Remember Khalsa Ji (Sikh Community) not to vote for Congress Appeal addressed as "O Singhos" (NN-5). (MM-3, JJ-3, PP-2, AA-2, AxG-2).
- (p) Khalsa Panth to vote for *Tirkaman* (ZZ-1).
- (q) Guru's Nishan (Flag) AxB-2.
- (r) Harijan Class of Sikhs addressed as Panth and exhorted to remember the religion and the religious flag and the sacrifices of the leaders in the cause of the Panth.
- (s) O *Tirkaman Wallah*, give me light and courage to vote like a crusader (AxO-3).
- (t) Vote on *Tirkaman* and get blessings of Guru (AxO-5).
- (u) Wah Guru (God Almighty)—Guru Govind Singh said that his blessings will go to those who will keep the Khalsa separate. If they go the way of Brahmins, he will not love them (AxS-2).

(v) It is reported that vow is taken by all Sikhs that it would be silly to vote for the Congress (HHHH-1).

(w) Vote for the Panth to please the Guru (TTT-4).

(x) To finish the Congress is moral warfare (Dharam Yudha) (AxF-1).

26. The passage referred to in the above two paragraphs are not written with reference to or intended to be read by people of any particular locality and so may be relied on by the petitioner as intended to influence the minds of the electorate in this Kapurthala-Bhatinda Constituency of the Pepsu as well. We think we ought to exclude from our consideration certain passages which were written in the columns of these papers with reference to other constituencies in Panjab or Pepsu, which did not form part of this Parliamentary Constituency, or with reference to other candidates not concerned with the election in question. Such passages are:—

BB-1, BB-5, MM-2, and DD-3 relating to Nakodar in the Panjab.

TT-1 relating to Jullunder in the Panjab.

UU-1 relating to Samana (candidate Ridha Singh).

UU-2 relating to Amritsar Election.

AxG-2. A poem describing merits of a number of candidates elsewhere though making general remarks about candidates of the Congress Party.

AxJ-1 and AxO-1 referring to Amritsar Constituency.

AAA-3 referring to Rupar Constituency.

MMM-1 referring to Elections in Ambala District.

OOO-1 referring to Capt. Kisen Singh.

ZZZ-2 referring to S. Joginder Singh in the Punjab.

F.3 referring to Cawnpore Elections in U.P.

H.6 referring to Elections in U.P.

H.9 referring to Elections in Delhi.

BBBB-2 referring to Brish Bhan's Election in Lehra Constituency of Pepsu.

27. As we have said, though the Akali Party under this designation is parading as a political organisation, it makes a definite discrimination in the matter of enlisting its members, the membership being strictly confined to men of Sikh community who are necessarily professing the Sikh religion. The word 'Panth' is not new or brought to existence with this Party. As told to us by Bhal Jodh Singh (P.W. 1) a great scholar of Sikh Theology, it is a word of Sanskrit origin literally meaning the 'way', but in the Sikh religion it has been in use to denote collectively all those who follow the Path of the Guru and so to signify the Sikh community. 'Panthic' is an adjective coined to connote 'of the Panth'. So Panthic candidate should literally signify a candidate of the Sikh Community, but as Bhal Jodh Singh again tells us Panthic candidate is now understood as a synonym of Akali Party candidate. It is the religious and communal character of the Akali Party which is forcefully demonstrated by the Party preferring to style itself as Panthic Party and the candidate who is the nominee of the party as Panthic candidate. Even at the time when there were separate sikh Electorates, the Akali Party used the word Panth for propaganda purposes against a rival candidate of the same community and in Baba Gurdit Singh's case (Doabia's Indian Election Cases Vol. I, p. 92) the Election Tribunal in 1937 did not consider it objectionable for the Akali Party to appeal to the electorate under the name of the Panth. Since that time it seems to have become a common practice of referring to the Akali Party as 'Panthic Party' and even the petitioner seems to accept that this nomenclature is now generally used to denote Akali Party. He himself used it with that import in appropriate places in his election petition, though in para 4 he avers that the Shiromani Akali Dal is using this name 'Panthic Party' for itself to indicate that it is representative of the religious and communal interests of the Sikh Panth or community. We find that the words 'Panth' and 'Panthal' have now gained so much currency as referring to the Akali Party that in our view no special religious or communal appeal is conveyed to the common man by their use than would be implicit in the officially recognised name of 'Akali Party'. The passages which make use of these words may therefore be safely treated as innocuous, no special appeal being conveyed to the electorate by such passages that their vote is canvassed on religious grounds for the Akali Party candidate. In this case the petitioner is perhaps as much a devout Sikh as any other member of Akali Party. If people by reason of the petitioner's association with a rival political party do not have the

same consideration for him as for an Akali Party candidate, it is not because of that party styling itself as 'Panthic Party' but because of its organisation on communal basis. We may therefore regard passages of the type described in (A) and (B) of para. 24 above as not helpful to prove commission of any corrupt practice.

28. Criticism of the policy and doings of the Congress Party (which is forming the Government at present) at the hands of a rival political organisation like Akali Party is not objectionable under the Election Law unless the criticism oversteps the legitimate bounds and enters upon a course which brings it within some forbidden corrupt practice. Passages like those in (i) to (v), in (C) of the same para. 24 may not thus be considered objectionable; the same, however, canot be said of the manner in which that criticism is given shape in the passages like (vi) and (vii) of that para. and in (a) to (f) of the next para. 25. In them the Congress is referred to as interfering with Sikhs religion and therefore there is appeal to the voters to make the political organisation of the Akali Party strong by voting against the Congress. S. 124(5) of the R. P. Act 1951 makes "the systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion or the use of or appeal to religious and national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of a candidate's election" a minor corrupt practice.

In the abovementioned passages interference of the Congress with Sikh religion is assumed and the necessity of avoiding that interference is made a plank for asking the voters to refrain from voting for the Congress candidate. It is true that in this particular case the Congress candidate happens to be of the same religion, but in view of the Congress policy as interpreted in these papers even Sikh Congress candidate cannot be a defender of their faith and therefore the Sikhs must vote an Akali Party Sikh into the legislature. This in our view clearly implies an appeal to vote for the Akali Party candidate on the ground of his religion because in view of the interference of the Congress with that religion a Congress candidate must be ruled out. Such a propaganda done on the eve of elections should necessarily imply an appeal to vote or refrain from voting even if in every case there is no express appeal made to the voters about casting votes.

29. The remaining passages like (g) to (x) in para. 25 constitute in our view an appeal on the ground of community, many of the passages making such appeal in the name of the community by drawing attention to the religious sanctity of the symbol 'Tirkaman' because of its association with the Guru, the defender of the faith. This appeal is coupled in some passages with the inducement of blessings of the Guru going to those who will vote on that symbol. There is also a reference in some passages to the saffron flag of the Guru. The Tirkaman and the flag are thus associated with the Guru and given a religious character, and by reference to these as religious symbols the appeal is made to vote for the symbol of Tirkaman. People who are appealed to as 'Khalsaji' or 'Khalsa Panth' or as 'O Singho' are clearly the entire Sikh Community. There has been an attempt throughout in these papers to rouse the religious sentiments of the Sikh community to a high pitch and to tell the Sikh people that they gain spiritual advantage and become defenders of the faith by voting for the Akali Party candidates and by refraining from voting for the Congress candidates.

30. S. 124(5) is a new provision in our Election Law which has been found necessary in consonance with the policy of the framers of our Constitution to make India a secular state—a state which has no religion of its own and which refrains from discrimination on grounds of religion. There is no corresponding provision in the election law of England and there in cases of this nature the appeal to religion could be regarded objectionable only if it could be found to amount to "Undue influence". We were referred to the following passage from Parker's Election Agent and Returning Officer (p. 305).

"All clerical or spiritual influence is not however undue. In the proper exercise of their legitimate influence, priests and clergy may lecture the people and address the congregations upon the conflicting claims of the different candidates; even in their chapels they may counsel, advise, recommend, entreat or explain why one should be preferred to another, for a priest is a citizen and entitled to have his political opinions and to exercise his legitimate influence legitimately. So also if priests believe that a spirit of antagonism to their church religion or clergy has risen and recognise in a particular party elements of danger to religion, they may use their influence to assert and maintain due respect and may express their opinion in suitable language that issues of great importance to religion are involved in a pending political contest."

It is therefore urged that when the leaders of Akali Party have reason to think that the religion of the Sikhs is in danger due to policy of the Congress Government in power, it is legitimate for them to point out the dangers resulting from that policy, one danger being, as they believed, evidenced by the fact of the turning of lakhs of Sikhs in Uttar Pradesh as apostates, as stated in Ex. G.4. In such circumstances it is urged that it should be legitimate in India as it would be in England for them to appeal that votes should be given to Akali Party candidates in preference to the Congress candidates. The above passage may be good law in India so far as spiritual undue influence is concerned, but it will not justify such appeal as not contravening the provision in S. 124(5) of the R. P. Act.

31. We agree with the view of the Bombay Election Tribunal in *Mouinuddin Vs. Bhawani Shanker* in their judgment on petition No. 78 of 1952 published in the *Gazette of India Extraordinary*, dated 27th January 1953 that in determining the scope of S. 124(5) we should have regard to Articles 13, 19(1)(a), 25(1) and 29(1) of the Constitution, but do not think that in consonance with those provisions of the Constitution the scope of the Section is narrowed down to prohibition of attacks on a particular religion or on a candidate only on the ground that he is a follower of a particular religion. The wider scope of the words in S. 124(5) which prohibits all kinds of appeals for vote in the name of religion, whether it is the religion of the electorate or of the candidate, would be quite in keeping with the power of the State to make law restricting of the freedom of speech and expression "in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to offence", which is now conferred by the amended Article 19(2) at the Constitution.

32. The repetition in effect if not in the same words of the offending statements over and over again (as is evident from the different issues of the papers in which they appear) amounts in our view to a systematic appeal. Though the appeal to vote or refrain from voting may have to be read into the passages by implication where it is not expressly made, there may be no doubt about such request for vote being earnest in character, which is an essential of appeal according to the dictionary meaning of the word. The respondents 1 and 2 as nominees of the Akali Party had a common cause and were being supported by the Akali Party to an equal extent. They had common election offices and all propaganda was done for both together. Therefore both the respondents 1 and 2 become answerable for the propaganda equally. So far as the Spokesman is concerned, the respondents are directly responsible because the respondent No. 1 was himself the proprietor of that paper. There is no denying the fact that Master Tara Singh is a great leader of the Akali Party and had been President of the Shromini Akali Dal for long. At the time of this propaganda the respondent No. 1 S. Hukam Singh himself had become President of Shiromini Akali Dal and the respondent No. 2 was a prominent member of that body. There is no doubt also that the three newspapers Ajit, Prabhat and Akali Patrika have been advocating the policy of the Akali Party. The Prabhat bears the Caption "Under the Leadership of Master Tara Singh, Spokesman of the Panth" under its title. Whoever may be proprietor, Printer, Editor or Publisher of these papers, they were advocating the view point and the cause of the Akali Party, and the respondents 1 and 2 do not aver that they have been ignorant of all this. These three papers in making this propaganda in so far as it was intended to affect the election in this Kapurthala Bhatinda constituency should therefore be regarded as agents of respondents 1 and 2. It is now commonly accepted that agency in election law has a wider significance than under the ordinary law of principal and agent and has to be inferred from circumstances and conduct. We may refer to cases reported in Sen and Poddar's Indian Election Cases at P. 34 and P. 746. In Roger's on 'Election' we find the following observation of Blackburn J on this point which is very pertinent:—(P. 391)

"A candidate is responsible generally, you may say, for the deeds of those who to his knowledge for the purpose of promoting his election, canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorised agents have reasonable knowledge that those persons are so acting with that object."

33. This brings us to the important question whether we can find the election vitiated by reason of all this propaganda in the newspapers. It must be stated about this propaganda that it is nearly all in general terms without reference to this particular Kapurthala Bhatinda Constituency or to the merits or demerits of the rival candidates of the Congress or Akali Party in this election. We are not referring here to the statements regarding Insurance Fraud case against S. Caveeshar which have been separately considered for the corrupt practice under S. 123(5). About the other allegations the petitioner's case is sought to be brought under S. 124(5)

of the R. P. Act, and this case as we have said may be taken to be established. In para. 12 of the petition, the petitioner somewhat hesitatingly has sought to relate the case to "undue influence" also, which if made out would result in avoidance of the election under S. 100(1)(a) of the R. P. Act without the necessity of showing that the result of the election has in fact been materially affected thereby. 'Undue influence' is defined in Section 123(2) of the Act as a direct or indirect interference with the free exercise of the electoral right, but the proviso to that section shows what kind of interference is contemplated to bring the case under the corrupt practice of 'Undue influence'. Undue influence is exercised according to the proviso by a person who—

- (i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community, or
- (ii) induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure.

It is not necessary that there should be any actual threat or physical compulsion held out but the method of inducement as may be adopted should convey to the mind of the person addressed that non-compliance with the wishes of the person offering the inducement may result in physical or spiritual harm to himself or to any other person in whom he is interested. Some fear of harm resulting from non-compliance with the request thus seems to constitute an essential element in 'undue influence'. Where the influence is said to be by a religious appeal as in this case, it should be shown that it was made to appear to the persons addressed that non-compliance would be considered to be irreligious or sinful. This manner of undue influence can generally be exercised by religious teachers or persons having reputation for learning and piety, but it may be inferred to be exercised by a newspaper editor also if he has some standing in the society (see Sen and Poddar, Indian Election Cases, Page 802). For instance if the editor quotes from a religious book, his act can easily influence the minds of the readers. But the definition seems to recognise that such influence can result only from a threat of harm and not from an assurance of spiritual benefit which the writing may hold out.

34. Viewed in this light we cannot find any passage where any such harm is threatened to be likely to result to persons who will not vote for the Akali Party candidates. There is reference in some passages as at (t), (u) and (w) in para. 25 above about blessings of the Guru descending upon those who will vote for the Panth or the symbol of Tirkaman, but there is no suggestion of any curse falling on or harm resulting to those who will not so vote. We therefore find that no case of exercise of undue influence has been made out by the petitioner.

35. Considering the propaganda as a corrupt practice under S. 124(5) it will help to avoid the election of the returned candidate only upon proof that the result of the election has been materially affected thereby. This is not the case of the election being procured or induced by the corrupt practice. The proof of material affection is necessary under S. 100(2)(a) of the R. P. Act and therefore the petitioner in the latter part of para. 12 of the petition has averred it. We cannot however find any material to find this established. This propaganda as we find was general for elections all over the Punjab and PEPSU where the contest was between the Akali Party and the Congress Party. We cannot infer that the Akali Party candidates succeeded in this Parliamentary constituency only because of the propaganda of these newspapers. We know that the propaganda did not affect the chances of Sadhu Ram P.W. 7, a congress candidate from Phagwara constituency of the PEPSU assembly, which was part of this Parliamentary Constituency. He was returned against an Akali Party candidate. Such reverses were suffered by the Akali Party in many constituencies in the Punjab also, though the propaganda of these papers was mainly directed to elections in the Punjab. Though S. Sardul Singh Caveeshar must be as good a Sikh as any of the respondents, the Sikh electorate could have considered S. Hukam Singh as better deserving of their support for the reason that he was not only a member but the President or the head of the party which from its religious and communal character must be nearer to the average Sikh's heart than the congress party. We cannot commend the communal spirit of these newspapers in resorting to the kind of systematic propaganda that they carried on for supporting the Akali Party candidates during the elections but we do not feel satisfied that the petitioner lost in the election because of this propaganda amounting to minor corrupt practice under Section 124(5). We accordingly find that the petitioner cannot be given the declaration about the election of the returned candidates being void as claimed by him. The disposes of issues III, IV and V as well.

36. Issue VI.—The respondents were not directly responsible for the corrupt practice even as it is proved and so no question of their disqualification is to be considered under S. 99 of the R.P. Act. In so exonerating the respondents from the consequences of this propaganda, we should not be understood to have put our seal of approval upon it. On the contrary we think the propaganda was rather odious and in bad spirit and the mentality behind it may even be described as opposed to the spirit of the Constitution. Though we do not help the petitioner, we think that he has done a public service by inviting attention to the nature of propaganda resorted to by the Akali Party in the last elections. We feel we should mark our disapproval of it and our approval of the petitioner's action in fighting out the issue by not mulcting him with payment of the respondent's costs. We dismiss the petition but direct the parties to bear their own costs as incurred.

(Sd.) V. B. SARWATE, Chairman.

(Sd.) RAGHUNANDAN SARAN, Member.

(Sd.) E. M. JOSHI, Member.

The 12th May, 1953.

#### ANNEXURE 'A'.

#### ELECTION PETITION NO 268 OF 1952

S. Sardul Singh, Caveeshar—  
Petitioner.

Vs.

S. Hukam Singh and others—  
Respondents

#### ORDER

The petitioner having lost in the election to a double member Parliamentary Constituency in which the Respondents No. 1 and 2 have been declared to be returned, presented this election petition in which he claims the following reliefs:—

- (1) a declaration that the election of the returned candidates respondents Nos. 1 and 2 is void.
- (2) Upon such declaration the Respondent No 7 to be declared to have been duly elected in the reserved seat in which Respondent No. 2 is declared to be returned.
- (3) Upon the grant of reliefs (1) and (2) above, the petitioner himself to be declared to have been duly elected in the general seat in which the Respondent No. 1 has been declared to be returned.
- (4) In the alternative, a declaration that the election is wholly void.

2. To the petition as presented under Section 81 of the Representation of the People Act, 1951, the petitioner joined as respondents only the respondents 1 to 8 who were actually in the contest with the petitioner in the election. After publication of the petition under S. 90 of the Act by this Tribunal, the Respondent No. 1 filed his written statement in which he pointed out that besides the petitioner and the respondents 1 to 8, there were four other persons whose nominations had been accepted by the Returning Officer under Section 36(7) but who had withdrawn their candidature under S. 37 of the Act and it was contended that these four persons being thus duly nominated were necessary parties who should also have been joined as respondents under S. 82 of the Act. The petitioner was thereupon allowed to join these persons as respondents 9 to 12.

3. To this late joinder objection is taken on behalf of Respondents 1 and 2 and a claim has been made on behalf of the newly added respondent No. 9 that if his joinder now is permitted, there should be a fresh publication of the amended petition under S. 90 to enable him to effectually exercise the right of recrimination under S. 97 of the Act.

4. For disposal of these objections, the following four preliminary issues have been framed by us:—

- (1) Were not the newly joined respondents No. 9 to 12 necessary parties according to Section 82 of the Representation of People Act, 1951?
- (2) What is the effect of non-joinder initially within time allowed for filing the petition of Respondents 9 to 12 as parties on maintainability of the petition and on the several reliefs claimed by the petitioner?

(3) (a) Can the petitioner claim the declaration that he himself or Respondent No. 7 has been duly elected in view of his failure to join the respondents No. 9 to 12 within the time allowed for filing the petition?

(b) If he can, have the newly joined respondents a right to recriminate under Section 97 against the petitioner and for the exercise of the right within the time allowed by that section to claim a republication of the petition under Section 90?

(4) Should respondents 9 to 12 be retained as parties on the record or should they be struck out?

5. Having heard the counsel of the parties at length on these issues we proceed to decide them as below:

6. Issue No. 1.—Under S. 82 of the Act all candidates duly nominated at the election must be joined as respondents. We find no difficulty in holding that respondents 9 to 12 were such duly nominated candidates when upon a scrutiny under S. 36 of the Act, their nomination papers having been found to be in order were endorsed as accepted. They did not then cease to be duly nominated by the mere withdrawal of their candidature under S. 37. From the terms of S. 38 it is clear that those who have not so withdrawn their candidature are referred to as valid nominations, the petitioner and the respondents 1 to 8 being of that category in this case. S. 82 does not enjoin the joinder of validly nominated candidates only which may be a more restricted category than that of duly nominated candidates as in the present case. That there is a distinction to be made between duly nominated and validly nominated candidates is put beyond all doubt by clause (f) of Rule 2 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951 according to which "validly nominated candidate" means a candidate who has been duly nominated and has not withdrawn his candidature. Respondents 9 to 12 in this case though not validly nominated candidates were duly nominated and so were necessary parties according to S. 82 of the Act.

7. Issue No. 2.—We are unable to accept the contention of the respondents that the petition is liable to be dismissed altogether for the failure of the petitioner to implead respondents 9 to 12 within the time allowed for presentation of the petition under Rule 119 of the rules above referred to. Sec. 82 of the Act is directory about the persons who should be joined as necessary parties to an election petition. This direction as we had occasion to observe recently in connection with another election petition, has in our view, been given by the legislature in order to ensure that all persons who were concerned with the election from the earliest stages should be present before the Tribunal in order to enable the tribunal to get all material facts and information from all probable sources and upon it to determine if the election had been free and fair or not. This we think is the purpose of the legislature in enacting the provisions in Part VI of the Act relating to disputes regarding elections and their settlement by Election Tribunals to whom the election petitions may be referred. Therefore if the petitioner has omitted to bring a proper and necessary party before the Tribunal, the tribunal should have power to call such party before it.

8. Though in S.85 of the Act a power is given to the Election Commission to dismiss the petition for non-compliance of the provision of S.81 or S.83 or S.117 and the same power may be exercised by the Tribunal under S.90(6) of the Act, there is no provision in the Representation of the People Act or the rules, thereunder for such dismissal of the petition for non-compliance of the provision in S.82. The power of the Tribunal to order joinder of necessary parties will, therefore, be regulated and the effect of non-joinder determined according to the provisions as regards the trial of suits under the Civil Procedure Code which according to S. 90(2) of the Representation of People Act, 1951, governs the procedure of the Tribunal in the trial of Election petitions. The rules in the Civil Procedure Code will not permit of an outright dismissal of a suit for failure of the plaintiff to join the necessary parties. In fact we have the provision in O.1, R 9, Civil Procedure Code that no suit shall be defeated by the misjoinder or non-joinder of parties and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The power of the Tribunal to join respondents 9 to 12 is thus derived from the provision in S.82 of Representation of People Act but for determining the effect of the petitioner's failure to join them within time allowed for presentation of the petition, we have to look to the Civil Procedure Code.

9. Under that Code such joinder of the parties would be treated as an amendment. In terms of O.1, R.10(4) of the Code, the Election Petition so far as respondents 9 to 12 are concerned will be deemed to have been instituted only on the date on which they were added. This amendment cannot relate back to the date on which the petition was presented under S.81 of the Act. It will, therefore, be permissible to the Tribunal to allow it only in so far as granting of permission to amend the plaint in a suit would be proper under O.6, R.17 Civil Procedure Code. In allowing amendments under that rule, two principles must be borne in mind. (1) that the amendment does not have the effect of prejudicing the rights of the other parties in the matter of defence and (2) the petitioner cannot be allowed to derive any advantage by his laches in the matter of the joining of necessary parties.

10. Upon an application of these tests, it is clear that the respondents 1 to 8 are in no way prejudiced in their defence by the permission for late joinder of respondents 9 to 12 in order to satisfy the requirement of S.82 of the Representation of the People Act. If the respondents 9 to 12 by their presence can help the Tribunal in supplying additional information for sustaining the claim of the other respondents such help should be welcome to them. According to our observations in para. 7 above these respondents 9 to 12 as parties to the petition may lend support to the returned candidates (Respondents 1 and 2) in the defence which they want to make to the petition or support the petitioner in his case. So far as the petitioner may try to rely on the support of these respondents, we would not be justified in allowing him to do it because that would be prejudicial to the defence of the other respondents. But in so far as they would give support to the defence made against the petitioner, the petitioner could not be allowed to avoid their help to the tribunal or to the other respondents by keeping them out of the petition against the provision in Section 82. So far as the reliefs about declaration of the election as wholly void or as partially void in respect of the return of the respondent 1 or respondent 2 are concerned, the late joinder of the respondents 9 to 12 does not in any way affect their trial or prejudice the rights of any other person except perhaps the petitioner himself in that he will not now be allowed to count on their support. There is no valid reason, therefore, to penalise the petitioner by throwing out the petition as regards these reliefs when he joins the respondents 9 to 12 to satisfy the requirements of S.82. We, therefore, find that the petition would still be maintainable for trial of the reliefs (1) and (4) as set out in para 1 above subject to this condition that these newly joined respondents in their right as parties to the petition will not be entitled to claim to render help to the petitioner to sustain his claim for these reliefs.

11. In so far as the reliefs (2) and (3) are concerned by which the petitioner seeks a declaration about himself or the respondent No. 7 as having been duly elected, we find that the petitioner cannot now be allowed to sustain his claim for them without doing violence to the two principles adverted to in para 9 above. The claim to the seats as envisaged in these reliefs would be sustainable subject to the right of the respondents to recriminate under Section 97 of the Representation of People Act. The proviso in sub-section (1) of that Section, however, puts a limitation upon the exercise of that right, that the party claiming it must give a notice of his intention to do so within 14 days from the date of the publication of the election petition under Section 90. There is no provision in law for a republication of the petition after any amendment as may be allowed, so that the result of the joinder by the petitioner of these parties after the expiry of the 14 days after publication of the petition, effectually deprives these newly joined respondents of their right to recriminate. True it is, that these respondents could themselves within 14 days of the publication of the petition have been entitled to apply for their joinder as respondents and further as such party to the petition to recriminate under Section 97. But because they had this option of claiming to be made party, that did not relieve the petitioner of his responsibility of joining them as respondents under Section 82 and having failed to comply with that provision he cannot now claim that he should be placed in the advantageous position of securing the seats for respondent No. 7 or for himself without any challenge from the respondents 9 to 12 as a result of his own laches which deprives them of the right of recrimination under Section 97. The only equitable way of remedying the resulting awkward situation by which the petitioner would be in the happy position of taking away the valuable right of recrimination against his claim for seats would obviously be to render the petitioner's claim for such reliefs unsustainable and we hold that the petitioner's claim for the reliefs (2) and (3) as set out above cannot be maintainable now.

12. Some cases were cited on behalf of the parties in which the claim to a seat was disallowed if all the duly nominated candidates had not been brought

before the court, even through the election of returned candidate, the respondent before the court was declared void. These cases being under the old law are not directly helpful in the present case because in the election rules under which these cases were decided there was a specific provision that if the seat was claimed then only all the duly nominated candidates, were necessary parties. In the Representation of the People Act, 1951 there is no such specific provision and Section 82 makes it obligatory that all the duly nominated candidates must be joined as respondents whether the seat is claimed or not. But in our opinion this has not made any material change in the law and the main consideration would still be the one on which we have proceeded *viz.* whether any party in whose absence it would not be possible for the Tribunal to adjudicate upon the petition or upon any part of it had been left out.

13. This disposes of Issues No. 3 and 4 as well. In the view which we take that the petitioner cannot now claim declaration about him or the respondent No. 7 being duly elected, the question of republication of the petition should not arise. We find also that respondents 9 to 12 should be retained as parties for opposing the petitioner, if they so choose, about his claim for the reliefs for which the petition is found to be still maintainable.

(Sd.) V. B. SARWATE, *Chairman.*

(Sd.) E. M. JOSHI, *Member.*

(Sd.) RAGHUNANDAN SARAN, *Member.*

[No. 19/268/52-Elec.III/7072.]

The 29th November 1952.

By Order,  
P. R. KRISHNAMURTHY, Asstt. Secy.

